

DORMITORY ORDINANCE

Jackson Township, March 8, 2017: The Township Council of the Township of Jackson has introduced an ordinance that removes both public and private schools as permitted uses from residential zones and defines and prohibits “dormitories” throughout the Township. The purpose of the ordinance is to preserve the character of Jackson Township, consistent with the goals and objectives set forth in the Township's Master Plan: “To achieve a pattern and mix of land uses that achieves various community planning objectives including the *provision of quality residential neighborhoods*, the protection of natural resources, the economic development of the community, and the creation of a livable and desirable community.

Schools remain permitted uses in specific zones within the Township including the PMURD, LC, NC and zones within the Pinelands. Additionally, the Master Plan created a Public Facilities and Education (PFE) Planning District, the intent of which is to designate lands for public facility and educational uses that are already committed to that purpose or are needed for a non-recreational public purpose in the future.

The Master Plan discusses extensively the planning principles behind the residential planning districts. In the R-1 Planning District “[t]he intent of this planning district is to make the existing residential development conforming with the Land Use Plan and to enable limited in-fill development of the same nature and intensity with access to public infrastructure.” The intent of the R-9, R-15, R-20 and R-30 Planning districts, “*is to recognize the extensive existing single-family residential development in the Township with lot sizes that are less than one acre in size. The objective of these Planning Districts is to ensure that the existing development conforms with the Land Use Plan and to enable limited in-fill development of the same nature and intensity within or adjacent to existing neighborhoods.*”

The elimination of schools and dormitories from residential zones is consistent with the Master Plan because a zone was created for educational zones, and because the Master Plan contemplates the limitation of uses located within existing residential zones to the same nature and intensity as the surrounding development. Schools are permitted within certain zones of the Township, where the use of a school is harmonious with the surrounding uses and areas.

Dormitories do not qualify as permitted accessory uses to public or private day schools as day schools implicitly do not require housing of students. Dormitories are not clearly subordinate, attendant or concomitant uses to day schools nor does such use of a property bear a “reasonable relationship” to a day school. Prohibiting dormitories from a zone in which public schools are allowed would not violate N.J.S.A. 40:55D-66 because it is not the school itself that is being prohibited, but the unrelated dormitory use. Additionally, residential uses are not permitted in the Highway Commercial or Neighborhood Commercial zones.

The ordinance is non-discriminatory on its face. The federal Religious Land Use and Institutionalized Persons Act (RLUIPA) was enacted to protect individuals, houses of worship, and other religious institutions from discrimination in zoning laws. RLUIPA prohibits zoning regulations that substantially burden the religious exercise of churches or other religious assemblies or institutions absent the least restrictive means of furthering a compelling governmental interest. The ordinance applies to both public and private institutions. Schools remain permitted in other dedicated zones throughout the Township.